

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HAROLD G. JINDRICH)

For Appellant: Harold G. Jindrich, in pro. per.

For Respondent: Tom Muraki
Acting Chief Counsel

Paul J. Petrozzi
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the **Franchise** Tax Board on the protest of Harold G. Jindrich **against** a proposed assessment of additional personal income tax and penalties totalling \$429.00 for the year 1972.

Appeal of: Harold G. Jindrich

After receiving information from the Internal Revenue Service concerning appellant's income for 1972, respondent searched its files and discovered that appellant had failed to file a California, personal income tax return for that year. Respondent mailed appellant a notice and demand to file a return, but received no response. Therefore, pursuant to Revenue and Taxation Code section 18648, respondent computed appellant's taxable income on the basis of the information available, and issued a deficiency assessment for the appropriate tax due. In accordance with sections 18681 and 18683, respondent added two-25 percent penalties for failure to file a timely return and for failure to file after notice and demand.

It is settled law, that respondent's determinations of tax and penalties for failure to file a return are presumptively correct, and that the taxpayer bears the burden of proving them erroneous. (Appeal of David A. and Barbara L. Beadling, Cal. St. Bd. of Equal., Feb. 3, 1977; Appeal of Myron E. and Alice Z. Gire, Cal. St. Bd. of Equal., Sept. 10, 1969; see also Appeal of Sarkis N. Shmavonian, decided today.) Despite numerous opportunities and requests to produce any available evidence tending to prove that respondent's determinations were erroneous in any respect, appellant has failed to submit any factual information at all. Appellant, therefore, has left us with no alternative but to conclude that respondent's computation of his tax liability was proper and correct in every respect, and that the penalties were fully justified.

Although appellant has addressed himself at length to a multitude of alleged violations of his constitutional rights by respondent, we must decline to rule on his contentions in view of our well established policy, in cases involving deficiency assessments, to leave such matters to the courts. This policy is based on the absence of any specific statutory authority that would allow respondent to secure judicial review of an adverse decision by this board. (Appeal of David B. and Delores Y. Gibson, Cal. St. Bd. of Equal., April 22, 1975; Appeal of Iris E. Clark, Cal. St. Bd. of Equal., March 6, 1976.) Even in the absence of such a policy, however, we would be compelled to conclude that appellant's constitutional arguments are totally without merit.

